

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

NORMAN L. SHAHEEN,
Plaintiff,

v.

COSTCO WHOLESALE
CORPORATION
Defendant(s).

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CIVIL ACTION NO.

1:21-cv-00493

DEFENDANT COSTCO WHOLESALE CORPORATION'S NOTICE OF REMOVAL

Defendant, **COSTCO WHOLESALE CORPORATION** ("Costco"), files this Notice of Removal under 28 U.S.C. §§ 1441, 1446, and 1332, and respectfully shows the Court the following:

**I.
Introduction**

1.1 On April 9, 2021, Plaintiff, **NORMAN L. SHAHEEN**, filed a personal injury lawsuit against **COSTCO WHOLESALE MEMBERSHIP, INC.**, an incorrect party, in the 225th Judicial District Court, Bexar County, Texas under Cause No. 2021-CI-06952 ("the state court action"). *Plaintiff's Original Petition, Ex. 1*. On May 6, 2021, Plaintiff amended his petition and filed suit against **COSTCO WHOLESALE CORPORATION**, the correct corporate entity. *Plaintiff's First Amended Petition, Ex. 2*. Plaintiff alleges that he suffered injuries when he slipped on an unknown substance while walking in the Food Court in the Costco warehouse located at 15330 Interstate 35 North, Selma, Texas. *Id.*, at ¶ 7. As a result, Plaintiff seeks to recover damages for: past and future healthcare expenses; past and future physical pain and mental anguish, physical disfigurement in the past and future; physical impairment, disability, and loss of enjoyment of life, past and future and loss of consortium and loss of household services. *Id.*, at ¶ 13 a- g.

1.2 The State Court Action is one over which this Court has original jurisdiction under 28 U.S.C. § 1332 and which may be removed to this Court in accordance with 28 U.S.C. § 1441. This is a civil action in which the matter in controversy exceeds \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

1.3 Service of Plaintiff's Original Petition on Costco Wholesale Membership, Inc., an incorrect Defendant, was executed on April 19, 2021. *See Service of Process Transmittal, Ex. 3.* Plaintiff's Amended Petition was served upon and accepted by defense counsel for Costco on May 7, 2021. Defendant filed its Original Answer to Plaintiff's First Amended Petition in state court on May 28, 2021. *See Defendant Costco Wholesale Corporation's Original Answer to Plaintiff's First Amended Petition, Ex. 4; State Court Docket Sheet, Ex. 5.*

II. The Parties

2.1 Plaintiff is a Texas citizen who resides in Guadalupe County, Texas. *Plaintiff's Original Petition*, at ¶ 2.01, *Ex. 1.*

2.2 Defendant Costco is a Washington Corporation with its principal place of business in the State of Washington. *See Franchise Tax Account Status, Ex. 6.*

III. Procedural Requirements for Removal

3.1 Removal is timely, as this Notice is filed within 30 days of Costco receiving service and Plaintiff's First Amended Petition on May 7, 2021. *See* 28 U.S.C. § 1446(b)(1).

3.2 Written notice of the filing of this Notice of Removal is being given to Plaintiff and his counsel as required by Texas law. Further, Costco is filing a copy of this Notice with the Clerk of the Court for Bexar County, Texas where Plaintiff's cause was originally filed. *See Costco's Notice of Filing of Notice of Removal, Ex. 7.*

3.3 Costco has submitted a copy of all processes, pleadings, and orders to this Court as required by 28 U.S.C. § 1446(a).

IV. Venue

4.1 Venue in this district is proper because the Western District of Texas, San Antonio Division, includes Guadalupe County, Texas. Bexar County, where the alleged incident occurred and where the original lawsuit is pending, is also located within the Western District of Texas. *Plaintiff's First Amended Petition*, at ¶ 6.

V. Jurisdictional Basis for Removal

5.1 Removal is proper pursuant to 28 U.S.C. § 1332 because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.00.

5.2 First, complete diversity of citizenship exists between the parties. Plaintiff represents that he is a resident of Guadalupe County, Texas. *Plaintiff's Original Petition*, at ¶ 2.01, *Ex. 1*. Costco is the only named Defendant in this lawsuit. *See id.* at § III. Costco is a Washington Corporation with its principal place of business in the State of Washington. *Franchise Tax Account Status, Office of Texas Comptroller, Ex. 5*. Costco is therefore deemed a citizen of Washington for diversity purposes. *See* 28 U.S.C. § 1332(c). For these reasons, the parties are completely diverse, and removal is appropriate on this ground.

5.3 Second, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In determining whether the amount in controversy has been met, the general rule is that the sum claimed by the plaintiff controls if the claim is apparently made in good faith. *Okeke v. Auto. Fin. Corp.*, 2016 U.S. Dist. LEXIS 196918, *16, 2016 WL 11582509 (W.D. Dist. Tex. Feb. 3, 2016) (citing *St. Paul Mercury Indemn. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89, 58 S. Ct. 586,

82 L. Ed. 845 (1938)). Here, Plaintiff seeks monetary damages of \$1,000,000 or more. *Plaintiff's First Amended Petition*, at ¶ Prayer, *Ex. 1*. As such, the amount in controversy requirement for removal is apparent on the face of Plaintiff's pleading.

**VI.
Jury Demand**

6.1 Costco made a jury demand in the State Court Action and paid the required fee. Upon removal, Costco continues to assert its rights under the Seventh Amendment to the U.S. Constitution and demands, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

Prayer

WHEREFORE, PREMISES CONSIDERED, Defendant **COSTCO WHOLESALE CORPORATION** prays that this Notice of Removal be deemed sufficient and that the proceedings attached hereto be removed from the 225th Judicial District Court in Bexar County, Texas to the docket of this Honorable Court.

Respectfully submitted,

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was forwarded in accordance with the Texas Rules of Civil Procedure on the 4th day of June 2021, to:

VIA EMAIL & E-SERVICE:

Gregory V. Gallagher
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ROBERT A. VALADEZ 